IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 205 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

DURLABHJI MORARJI JOGI

Appearance:

1. Criminal Appeal No. 205 of 1991

MR BY MANKAD, ADDL.PUBLIC PROSECUTOR for Petitioner No. 1

MR UNMESH TRIVEDI FOR MR RR TRIVEDI for Respondent No. 1

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 08/08/2001

ORAL JUDGEMENT

The State of Gujarat has filed this appeal through Shri V.J. Patel, Food Inspector, Junagadh and challenged the judgement and order of acquittal dated 28.1.1991 passed by the learned Additional Sessions

Judge, Junagadh in Criminal Appeal No. 39 of 1987, whereby the learned Judge allowed the appeal filed by the respondents - accused and set aside the order of conviction and sentence dated 27.8.1987 passed by the learned JMFC, Keshod, convicting the respondents accused for the offences under Sections 7 and 50 read with Section 16 of The Prevention of Food Adulteration Act, and sentenced them to suffer two years and six months RI respectively.

On 27.10.1983, the complainant went to the shop of the respondent and took sample of "Tikka Ganthia" one type of "Namkin". The sample was sent to the public analyst for analysis and report. As per the public analyst's report, it was found to be adulterated in the sense that it does not conform to the standards and provisions laid down under the Prevention of Food Adulteration Rules, 1955. The report says that non-permitted coaltar colour mentanil yellow detected was detected in the sample.

The learned Magistrate found that the respondents accused guilty for the offences under Sections 7 and 50 read with Section 16 of The Prevention of Food Adulteration Act, and sentenced them to suffer 2 years and six months RI respectively and to pay a fine of Rs. 250/- In appeal filed by the respondents accused, the learned Appellate Judge was of the opinion that the complainant failed to prove that the said sample was taken from the shop of the respondents accused and on other points he gave benefit of doubt and allowed the appeal. Accordingly, the judgement and order of conviction and sentence passed by the trial Court was set aside.

This is an appeal of 1991, which is placed for final disposal today after ten years of the order of acquittal passed by the trial court and after about 18 years of the date of commission of the offence. The respondent No.1 was stated to be 71 years and respondent No.2 was stated to be nearly 60 years at the time of commission of the offence. Therefore, they may be practically too old. Though prima-facie I do not agree with the reasoning assigned by the learned Additional Sessions Judge for acquitting the accused, in the peculiar facts and circumstances of the case and looking to the age of the respondents accused, I am not inclined to interfere with the order of acquittal after a period of almost 18 years. In my considered opinion, pendency of appeal for all these years itself is a sufficient punishment to them.

In view of the above discussion, this appeal fails and is dismissed. Bail bonds stand cancelled.

(B.J.Shethna,J.)

*/Mohandas